COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No. 217-2019

IN RE: CHESTER WATER AUTHORITY TRUST

DECREE

AND NOW, this 19th day of June, 2019, upon the request of Petitioner, Chester Water Authority, and having received no objection, it is hereby **ORDERED** and **DECREED** that the deadline for ratepayers to file responses to the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority is extended to July 1, 2019.

BY THE COURT:

SPIROS E. ANGELOS, J.

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
OPRHANS' COURT DIVISION

IN RE: CHESTER WATER AUTHORITY TRUST	:	**No. 217-2019**

PRELIMINARY DECREE

AND NOW, this 16th day of May, 2019, upon consideration of the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority, it is hereby **ORDERED** and **DECREED** as follows:

1. The Chester Water Authority (the "Authority") shall serve notice of the filing of the Petition as follows:

a. By mailing a Notice to Plead along with a copy of the Petition, Preliminary Decree and Proposed Decree via first-class United States mail, postage prepaid, to the following:

City of Chester c/o Kenneth R. Schuster, Esq. City Solicitor 405 Avenue of the States Chester, PA 19013	Incorporator
City of Chester c/o Kevin Greenberg, Esq. c/o Joel M. Eads, Esq. c/o Bradly A. Nankerville, Esq. 1717 Arch Street, Suite 400 Philadelphia, PA 19103	City of Chester
Delaware County c/o Michael Maddren, Esq. 201 W. Front Street Media, PA 19063	Appointing Entity

John A. Terrill, II, Esq. Karen A. Fahrner, Esq. 100 Four Falls, Suite 300 West Conshohocken, PA 19428	Chester Water Authority
J. Adam Matlawski, Esq. 1223 N. Providence Road Media, PA 19063	Chester Water Authority
Francis J. Catania, Esq. 230 N. Monroe Street, 2nd Floor P.O. Box 2029 Media, PA 19063	Chester Water Authority
Rocco P. Imperatrice, Esq. 3405 West Chester Pike Newtown Square, PA 19073	AQUA Pennsylvania
Joel Frank, Esq. 24 E. Market Street P.O. Box 565 West Chester, PA 19381	AQUA Pennsylvania

b. By mailing postcard notice ("Ratepayer Notice") to the Authority's ratepayers via first-class United States mail, postage prepaid, at the address reflected on the records of the Authority and substantially in the form attached to the Petition as Exhibit "B", which includes a recital that a copy of the Petition, Preliminary Decree and Proposed Decree will be posted and made available on the Authority's website at http://www.chesterwater.com and will be provided in hard copy to any ratepayer who requests a copy, as described in the Ratepayer Notice.

c. By publication of the Notice substantially in the form attached to the Petition as Exhibit "C", in the Delaware County Legal Journal and the Delaware County Daily Times over a period of two (2) successive dates, starting on July 4, 2019 and ending on July 11, 2019.

Chester County c/o Thomas L. Whiteman, Esq. Solicitor 1313 W. Market Street, Suite 6702 West Chester, PA 19380	Appointing Entity
Department of Environmental Protection Office of Chief Counsel c/o Gina Thomas P.O. Box 2063 400 Market Street, 16th Floor Harrisburg, PA 17105	Supervisory Department of the Commonwealth of Pennsylvania
Susquehanna River Basin Commission c/o Jason E. Oyler, Esq. General Counsel 4423 North Front Street Harrisburg, PA 17110	Governmental Agency
Trustees of the Chester Water Authority Trust c/o Denis A. Gray, Esq. Palmer & Gray LLP Carriage House, Suite 100 115 Bloomington Avenue Wayne, PA 19087	Trustees of Chester Water Authority Trust
Wells Fargo Bank, N.A. c/o William E. Mahoney, Jr., Esq. 2005 Market Street, Suite 2600 Philadelphia, PA 19103	Trustee for Outstanding Bonds
Kevin Dooley Kent, Esq. Megan A. Guernsey, Esq. Joseph W. Jesiolowski, Esq. Centre Square, West Tower 1500 Market Street, Suite 3900 Philadelphia, PA 19102	Chester Water Authority

2. Counsel for the Authority shall provide Proof of Service to the Authority's ratepayers by affidavit stating that Notice was mailed to all rate payers in the form attached to the Petition as Exhibit "B" by first class mail, postage prepaid.

3. Hearing on the Petition is scheduled for **Thursday, July 18, 2019 at 9:00 a.m. in Courtroom 10.**

4. The Authority shall post this Preliminary Decree on its website at http://www.chesterwater.com, within three (3) days of its receipt of this Court's entry of the Order.

BY THE COURT:

SPIROS E. ANGELOS, J.

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No. 217-2019

IN RE: CHESTER WATER AUTHORITY TRUST

DECREE

AND NOW, this 16th day of May, 2019, upon consideration of the Petition of Chester Water Authority to Extend Time, it is hereby **ORDERED** and **DECREED** that the deadline for filing responses to the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority is extended to June 19, 2019.

BY THE COURT:

SPIROS E. ANGELOS, J.

NOTICE OF CHESTER WATER AUTHORITY LEGAL PROCEEDING

TO: Chester Water Authority ratepayers and other interested parties

The Chester Water Authority hereby gives notice of the Petition it has filed in the Delaware County Court of Common Pleas, Orphans' Court Division, entitled *In re: Chester Water Authority Trust, Petition for Approval of Declaration of Trust Under Pennsylvania Law and the Transfer of Legal Title to Certain Assets of Said Trust*, No. 19-217 (the "Petition").

The Petition seeks the Court's approval of the Authority's declaration of trust and transfer of certain assets into the trust.

THE HEARING SCHEDULED FOR APRIL 24, 2019 AT 9:00 A.M. WILL BE CONTINUED UNTIL A LATER DATE. NOTICE OF THE RESCHEDULED HEARING WILL BE POSTED WHEN THE NEW DATE IS AVAILABLE.

Information will be available at http://www.chesterwater.com.

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No. 217-2019

IN RE: CHESTER WATER AUTHORITY TRUST

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE PETITION FOR APPROVAL OF DECLARATION OF TRUST UNDER PENNSYLVANIA LAW AND THE TRANSFER OF LEGAL TITLE TO CERTAIN ASSETS TO THE TRUST WITHIN TWENTY (20) DAYS FROM THE DATE OF NOTICE OR ON OR BEFORE THE DATE WHEN THE PLEADING IS TO BE FILED, WHICHEVER IS LATER, OR THE COURT MAY DEEM THAT YOU HAVE NO OBJECTION TO THE RELIEF REQUESTED THEREIN AND MAY GRANT SUCH RELIEF WITHOUT FURTHER NOTICE TO YOU.

Dated: April 1, 2019

CONRAD O'BRIEN PC

By: _____

Kevin Dooley Kent, Esq. (No. 85962)
Megan A. Guernsey, Esq. (No. 202065)
Joseph W. Jesiolowski (No. 307323)
Centre Square, West Tower
1500 Market Street, Ste. 3900
Philadelphia, PA 19102
Phone: (215) 864-9600
Fax: (215) 864-9620
Email: kkent@conradobrien.com
mguernsey@conradobrien.com
jjesiolowski@conradobrien.com

Attorneys for Chester Water Authority

NOTICE OF CHESTER WATER AUTHORITY LEGAL PROCEEDING

TO: Chester Water Authority ratepayers and other interested parties

The Chester Water Authority hereby gives notice of the Petition it has filed in the Delaware County Court of Common Pleas, Orphans' Court Division, entitled *In re: Chester Water Authority Trust, Petition for Approval of Declaration of Trust Under Pennsylvania Law and the Transfer of Legal Title to Certain Assets of Said Trust*, No. 19-217 (the "Petition").

The Petition seeks the Court's approval of the Authority's declaration of trust and transfer of certain assets into the trust. A copy of the Court's April 1, 2019 Preliminary Decree; a Notice to Plead and the Petition, along with a Proposed Final Decree, are posted on the Authority's website, http://www.chesterwater.com, and will be made available by the Authority to any ratepayer or interested party on request.

Further information is available http://www.chesterwater.com.

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

IN RE: CHESTER WATER AUTHORITY TRUST	:	**No. 19-217**

PRELIMINARY DECREE

AND NOW, this 1st day of April, 2019, upon consideration of the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority, it is hereby **ORDERED** and **DECREED** as follows:

1. The Chester Water Authority (the "Authority") shall serve notice of the filing of the Petition as follows:

a. By mailing a Notice to Plead along with a copy of the Petition, Preliminary Decree and Proposed Decree via first-class United States mail, postage prepaid, to the following:

City of Chester — Incorporator
c/o Kenneth R. Schuster, Esq.
City Solicitor
405 Avenue of the States
Chester, PA 19013

Delaware County — Appointing Entity
c/o County Clerk Anne M. Coogan
Government Center, Room 206
201 W. Front Street
Media, PA 19063

Chester County — Appointing Entity
c/o Thomas L. Whiteman, Esq.
Solicitor
1313 W. Market Street, Suite 6702
West Chester, PA 19380

Department of Environmental Protection Office of Chief Counsel c/o Anderson Hartzell P.O. Box 2063 400 Market Street, 16th Floor Harrisburg, PA 17105	Supervisory Department of the Commonwealth of Pennsylvania
Susquehanna River Basin Commission c/o Jason E. Oyler, Esquire General Counsel 4423 North Front Street Harrisburg, PA 17110	Governmental Agency
Delaware River Basin Commission c/o Kenneth Warren, Esquire General Counsel Warren Environmental Counsel, LLC 975 Mill Road Millbridge Manor House Suite A Bryn Mawr, PA 19010	Governmental Agency
Trustees of the Chester Water Authority Trust c/o Denis A. Gray, Esquire Palmer & Gray LLP Carriage House, Suite 100 115 Bloomington Avenue Wayne, PA 19087	Trustees of Chester Water Authority Trust
Wells Fargo Bank, N.A. c/o Mark Nelson, Esquire 123 S. Broad Street Suite 1500, MACY 1379-159 Philadelphia, PA 19109	Trustee for Outstanding Bonds
Kevin Dooley Kent, Esquire Megan A. Guernsey, Esquire Joseph W. Jesiolowski, Esquire Centre Square, West Tower 1500 Market Street, Suite 3900 Philadelphia, PA 19102	Chester Water Authority
John A. Terrill, II, Esquire Karen A. Fahrner, Esquire 100 Four Falls, Suite 300 West Conshohocken, PA 19428	Chester Water Authority

J. Adam Matlawski, Esquire
1223 N. Providence Road
Media, PA 19063

Chester Water Authority

b. By mailing postcard notice ("Ratepayer Notice") to the Authority's ratepayers via first-class United States mail, postage prepaid, at the address reflected on the records of the Authority and substantially in the form attached to the Petition as Exhibit "B", which includes a recital that a copy of the Petition, Preliminary Decree and Proposed Decree will be posted and made available on the Authority's website at http://www.chesterwater.com and will be provided in hard copy to any ratepayer who requests a copy, as described in the Ratepayer Notice.

c. By publication of the Notice substantially in the form attached to the Petition as Exhibit "C", in the Delaware County Legal Journal and the Delaware County Daily Times over a period of two (2) successive dates, starting on April 10, 2019 and ending on April 17, 2019.

2. Counsel for the Authority shall provide Proof of Service to the Authority's ratepayers by affidavit stating that Notice was mailed to all rate payers in the form attached to the Petition as Exhibit "B" by first class mail, postage prepaid.

3. Hearing on the Petition is scheduled for **Wednesday, April 24, 2019 at 9:00 a.m. in Courtroom 10.**

4. The Authority shall post this Preliminary Decree on its website at http://www.chesterwater.com, within three (3) days of its receipt of this Court's entry of the Order.

BY THE COURT:

SPIROS E. ANGELOS, J.

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No. 217-2019

FILED
MAR - 1 2019
CLERK OF ORPHANS COURT DIVISION
DELAWARE COUNTY, PA

IN RE: CHESTER WATER AUTHORITY TRUST

PRELIMINARY DECREE

AND NOW, this _____ day of _____ 2019, upon consideration of the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority, it is hereby ORDERED and DECREED as follows:

1. The Chester Water Authority (the "Authority) shall serve notice of the filing of the Petition as follows:

a. By mailing a Notice to Plead along with a copy of the Petition, Preliminary Decree and Proposed Decree *via* first-class United States mail, postage prepaid, to the following:

City of Chester
c/o Kenneth R. Schuster, Esq.
City Solicitor
405 Avenue of the States
Chester, PA 19013

Incorporator

Delaware County
c/o County Clerk Anne M. Coogan
Government Center, Room 206
201 W. Front Street
Media, PA 19063

Appointing Entity

Chester County
c/o Thomas L. Whiteman, Esq.
Solicitor
1313 W. Market St. Ste. 6702
West Chester, PA 19380-0991

Appointing Entity

Department of Environmental Protection Office of Chief Counsel Front Office P.O. Box 2063 400 Market St., 16th Floor Harrisburg, PA 17105	Supervisory Department of the Commonwealth of Pennsylvania
Susquehanna River Basin Commission c/o Jason E. Oyler, Esq. General Counsel 4423 North Front Street Harrisburg, PA 17110	Governmental Agency
Delaware River Basin Commission c/o Kenneth Warren, Esq. General Counsel Warren Environmental Counsel, LLC 975 Mill Road Millbridge Manor House Suite A Bryn Mawr, PA 19010	Governmental Agency
Trustees of the Chester Water Authority Trust c/o Denis A. Gray, Esq. Palmer & Gray LLP Carriage House, Suite 100 115 Bloomington Avenue Wayne, PA 19087	Trustees of Chester Water Authority Trust
Wells Fargo Bank, N.A. 123 S. Board Street Suite 1500, MAC Y 1379-159 Philadelphia, PA 19109 Attn: Corporate, Municipal and Escrow Securities	Trustee for Outstanding Bonds

b. By mailing postcard notice ("Ratepayer Notice") to the Authority's ratepayers *via* first-class United States mail, postage prepaid, at the address reflected on the records of the Authority and substantially in the form attached to the Petition as Exhibit "B," which includes a recital that a copy of the Petition, Preliminary Decree and Proposed Decree will be posted and made available on the Authority's website at http://www.chesterwater.com and will be provided in hard copy to any ratepayer who requests a copy, as described in the Ratepayer Notice.

c. By publication of the Notice substantially in the form attached to the Petition as Exhibit "C," in the Delaware County Legal Journal and the Delaware County Daily Times over a period of two (2) successive dates, starting on March 15, 2019 and ending on March 22, 2019.

2. Counsel for the Authority shall provide Proof of Service to the Authority's ratepayers by affidavit stating that Notice was mailed to all rate payers in the form attached to the Petition as Exhibit "B" by first class mail, postage prepaid.

3. Hearing on the Petition is scheduled for _____.

4. The Authority shall post this Preliminary Decree on its website at http://www.chesterwater.com, within three (3) days of its receipt of this Court's entry of the Order.

_____
J.

cc: Kevin Dooley Kent, Esq.
Megan A. Guernsey, Esq.
John A. Terrill, II, Esq.
Karen A. Fahrner, Esq.
J. Adam Matlawski, Esq.

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No.

IN RE: CHESTER WATER AUTHORITY TRUST

FINAL DECREE

AND NOW, this _____ day of _____ 2019, upon consideration of the Petition for Approval of Declaration of Trust under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to Said Trust of the Chester Water Authority ("Petition"), any response thereto, and hearing thereon, it is hereby ORDERED and DECREED as follows:

1. The Trust document attached as Exhibit "A" to the Petition entitled the "Chester Water Authority Trust," established by petitioner, Chester Water Authority (the "Authority") is hereby APPROVED.

2. The transfer of legal title to the assets described in the Petition, in particular:

   Any real and/or personal property, as further defined by the express designation of the Solicitor and Authority personnel, that comprise and make up the generation; transmission and storage-related assets of the Authority. Notwithstanding the foregoing, no transfer shall occur with respect to any permit(s) or license(s) held by the Authority and/or any real property in which title thereof would void, contradict the terms of or regulations governing, or otherwise jeopardize the status of any such permit(s) or license(s). To the extent the transfer of any designated asset(s) would result in a breach of the Authority's existing contracts or agreements, the transfer of that designated asset shall not occur.

And provided to the Court on _____ is hereby APPROVED.

3. Any objection to the Petition is hereby OVERRULED, and any claim or demand to the relief requested by the Authority in the Petition, whether asserted or unasserted, is forever barred.

J.

cc: Kevin Dooley Kent, Esq.
Megan A. Guernsey, Esq.
John A. Terrill, II, Esq.
Karen A. Fahrner, Esq.
J. Adam Matlawski, Esq.

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No.

IN RE: CHESTER WATER AUTHORITY TRUST

PETITION FOR APPROVAL OF DECLARATION OF TRUST UNDER PENNSYLVANIA LAW AND THE TRANSFER OF LEGAL TITLE TO CERTAIN ASSETS TO THE TRUST

TO THE HONORABLE, THE JUDGES OF SAID COURT:

The Petition of the Chester Water Authority, trustee of certain public natural resources for the benefit of the designated beneficiaries who are citizens of this Commonwealth pursuant to Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania, as confirmed by pronouncement of the Pennsylvania Supreme Court further described below, seeks, by its undersigned counsel, this Honorable Court's approval of the Chester Water Authority's declaration of trust memorializing the necessary fiduciary obligations and duties with respect to such public natural resources through the formality of its establishment of the Chester Water Authority Trust, and the transfer of assets thereto, and represents the following:

Introduction

1. Article I, Section 27 of the Pennsylvania constitution – the Environmental Rights Amendment ("ERA" or "Section 27") provides that "*The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are the common property of all the*

people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

2. Article I Section 27 contains an express statement of the rights of the people, and the fiduciary obligations of the Commonwealth with respect to the conservation and maintenance of public natural resources. It establishes a public trust – with the natural resources as corpus, the Commonwealth as trustee, and the people as beneficiaries. *Pennsylvania Envtl. Def. Found. v. Commonwealth*, 161 A.3d 911, 916 (Pa. 2017) ("*PEDF*").

3. In particular, the Commonwealth has a duty as trustee to conserve and maintain public natural resources, which duties also extend to other governmental entities and levels of government. *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality); *PEDF*, 161 A.3d 911.

4. Petitioner, Chester Water Authority (the "Authority"), is a governmental entity of the Commonwealth and municipality authority, incorporated pursuant to, and existing under, the provisions of the Municipality Authorities Act, 53 Pa.C.S. § 5601, *et. seq.*, as amended (the "Act").

5. Under Pennsylvania jurisprudence the Authority stands also as a trustee, with express fiduciary duties under, *inter alia*, the ERA.

6. In particular, the Authority holds duties as a trustee concerning the conservation and maintenance of public natural resources under Pennsylvania law, in full accord with the purposes and powers granted to it under the Act, those also being for the benefit of the designated beneficiaries who are citizens of the Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health and living conditions. 53 Pa.C.S. § 5620.

7. To benefit the designated beneficiaries who are citizens of the Commonwealth, the Authority operates a water supply system to provide quality, clean and safe water to all of its ratepayers, when they need it, at a reasonable cost; to promote the economic vitality and general welfare of its present and future ratepayers; and to satisfy the water needs of its current and future ratepayers through orderly growth.

8. The Authority's provision of water also supports the safety of the people of the Commonwealth, as it supplies life-saving water for fire protection including for hydrant usage.

9. For over 150 years the Authority and its predecessors have successfully implemented and advanced its mission and operation. When first formed, the Authority's predecessor provided water services to sixty-seven (67) customers solely within the south end of Chester City. Today, the Authority effectively serves more than 200,000 residents and businesses throughout southern Chester County, western Delaware County and the City of Chester (herein, the "Service Area"). As between these three entities, ratepayers within the City of Chester comprise twenty-one percent (21%) of the Authority's total customers; the remaining portion of Delaware County sixty-two percent (62%) and Chester County, seventeen percent (17%).

10. The Authority continuously strives to invest in and improve its water treatment and distribution infrastructure, and Authority water consistently meets or exceeds the criteria established by the Pennsylvania Department of Environmental Protection (PA DEP), the United States Environmental Protection Agency (US EPA), and the American Water Works Association (AWWA).

11. The Authority's growth, and funding of investments and improvements, has been through revenues generated from the Authority's ratepayers alone; the Authority does not and

has not received assets or funds from the City of Chester (the "City"), Chester County, or Delaware County, aside from in their capacities as ratepayers, to support its endeavors.

12. The Authority provides safe, quality water at some of the lowest rates in the region. For example, in 2017, a residential customer using an average of 18,000 gallons of water a quarter pays $119.28 in the Authority's Eastern Region and $142.86 in the Western region. These rates remain approximately 40% less than those charged by private water companies in the region.

13. Recently the Authority's continuing ability to discharge its fiduciary obligations and provide safe, high-quality water at reasonable costs to present and future rate payers within the Service Area of the Commonwealth has been challenged. The City has threatened it may seek to dissolve the Authority and assume proprietorship over the Authority's assets and operations, a move that arises out of the City's desire to exit Pennsylvania's Act 47 Financial Recovery Program ("Act 47," more fully described in Subpart b of Section I, below). Facilitated by a multi-million-dollar payment from an Investor Owned Utility ("IOU") to the City for the purchase of the Authority's assets, such a transaction would result in the transfer of public natural resources to a private, profit-making company in violation of the Authority's role as trustee under the ERA. It would also require present and future ratepayers in the Commonwealth to pay billions of dollars to that IOU and its shareholders in the form of increased water rates in perpetuity.

14. The Authority disputes that the City has the power to dissolve the Authority and monetize its assets under the Act, and further asserts that the ERA and Pennsylvania law mandate that the assets – and any proceeds therefrom – belong to, and are presently held in trust for, the benefit of the designated beneficiaries who are citizens of the Commonwealth.

15. The City took its position regarding its purported power to dissolve and monetize the Authority after an offer had been made directly to the Authority by Aqua Pennsylvania, Inc., an IOU, to purchase the assets of the Authority for three hundred and twenty million dollars ($320,000,000.00), which was unanimously rejected by the Authority as not in the best interests of its present and future ratepayers.

16. Subsequently, in order to continue with its mission and comply with its fiduciary duties as trustee to protect and benefit the people of this Commonwealth, the Authority expressly memorialized its role as fiduciary in the conservation and maintenance of public natural resources,[1] and formally established the Chester Water Authority Trust (herein, the "Trust"), a true and correct copy of which is attached hereto as Exhibit "A."

17. The Authority believes that having the assets held in trust under the express terms of the Trust will ensure that the Authority will continue unabated in its mission of providing safe, high-quality and affordable water to the people of the Commonwealth, in accordance with the existing fiduciary obligations and duties imposed by law with respect to water as a natural resource expressly protected by the ERA.

18. As a trustee by designation of the ERA as confirmed by the Supreme Court of the Commonwealth, the Authority seeks this Court's approval of the Authority's formalization of its

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[1] As stated by the Supreme Court in *PEDF*, 161 A.3d at 932:

> The *Robinson Township* plurality aptly described the Commonwealth's duties as the trustee of the environmental trust created by the people of Pennsylvania as follows:
>
> > As trustee, the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct. The explicit terms of the trust require the government to "conserve and maintain" the corpus of the trust. See Pa. Const. art. I, § 27. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality.
>
> *Robinson Twp.*, 83 A.3d at 956-57.

fiduciary obligations and duties by memorializing them in the Trust, and transferring title to certain assets described herein to the Trust. Petitioner seeks, through this Trust, to protect, conserve and maintain these assets which comprise the corpus of the environmental trust over which the Authority serves, for the benefit of the designated class of citizens of this Commonwealth.

Jurisdiction and Venue

19. Jurisdiction within this Court is proper under Sections 711(3) and 711(12) of the Pennsylvania Probate, Estates and Fiduciaries Code, 20 Pa.C.S. §§ 711(3), 711(12), (the "PEF Code") as this matter involves and implicates the actions of the Authority as fiduciary with regard to the administration and distribution of the real and personal property of a trust memorialized as the Trust. Further, jurisdiction within this Court is also permitted pursuant to Section 712(3) of the PEF Code as it involves substantial questions that concern those matters within this Court's mandatory jurisdiction, namely the administration and distribution of the real and personal property of a trust memorialized as the Trust, in addition to certain other matters unaddressed within this Court's mandatory exercise of jurisdiction.

20. Venue lies in Delaware County under Section 722 of the PEF Code, 20 Pa.C.S. § 722 as Delaware County, Pennsylvania is the situs for the Trust.

I. BACKGROUND

a. The Authority

21. Petitioner's predecessor was initially formed in 1866. On July 6, 1939 it was incorporated as the "Chester Municipal Authority" for a period of fifty (50) years. The Authority's articles of incorporation were thereafter amended on March 8, 1965 to change its name to the Chester Water Authority and to reincorporate for another fifty-year term. Most recently it was incorporated for another fifty (50) year term in 1998.

22. The Authority exists separate and apart from the City, Chester County and Delaware County. It does not, and has not, received funds from the City, Chester County or Delaware County to support its endeavors. Rather, the Authority has grown and funded its investments and operations through its ratepayers in Chester County, Delaware County and the City, the ratepayers who, in turn, stand as the direct beneficiaries of its mission and endeavors.

23. The Authority is a financially healthy, functioning utility that holds significant assets. It operates 680 miles of water mains, and maintains storage facilities that hold approximately 102 million gallons of treated water. It has two major sources of water supply through ownership rights, agreement and/or permit. From the Susquehanna River, at a point approximately 50 miles west of the City, the Authority may withdraw up to 30 million gallons of water per day. Pursuant to its purchase of necessary real property and water rights in 1948, the Authority can withdraw up to 30 million gallons per day from the Octoraro Creek.

24. On the dam constructed in the Octoraro Creek the Authority has constructed a treatment plant and pumping station. The filters at the treatment plant can treat up to approximately 60 million gallons per day. Treated water is pumped from the plant to three Oxford Summit storage tanks, and from there the water flows by gravity approximately 30 miles to the primary demand center in Delaware County. The Authority has constructed two pumping stations (Rosedale and Kelton Pennock Pumping Stations) to provide transmission flow rates in excess of the gravity flow rates of 40 million gallons per day. It has a high-lift pumping station and an auxiliary pumping station collectively known as the Ashville Road Pumping Station, which supplies the transmission mains that carry the finished water from the Octoraro Treatment Plant to the Oxford storage tanks.

25. On average, the Authority's rates are between forty and fifty percent lower than those charged by its neighboring water utility, in part because the Authority does not have to pay federal or state income tax, or shareholder dividends.

26. Since 1998 the Authority has only raised rates nine (9) times, providing its customers with some of the lowest water rates in the region.

b. **The City's Distressed Status, and Legislative Changes Impacting the Authority**

27. The City of Chester is a City of the Third Class with a population of approximately 33,000 residents. The City has residential, commercial and industrial ratepayers of the Authority throughout, with the latter two categories far exceeding the volume of residential ratepayers' sales.

28. The City was approved as a Home Rule Charter Community in 1980.

29. The City incorporated the Authority.

30. Since April 6, 1995 the City of Chester has been designated as a financially distressed municipality under the Financially Distressed Municipalities Act of 1987, P.L. 246, No. 47 ("Act 47").[2] Through this time, the City has operated under at least four (4) different recovery plans, issued by various statutorily-appointed recovery coordinators, all of which have advocated for various and differing strategies to assist the City with its financial recovery. *See* 12 Pa. Code § 115.4

31. No recovery plan has ever referenced or recommended that the Authority's assets be sold to an IOU.

[2] Act 47 empowers the Pennsylvania Department of Community and Economic Development to declare certain municipalities as financially distressed. It provides for the restructuring of debt of financially distressed municipalities, limits the ability of financially distressed municipalities to obtain government funding, authorizes municipalities to participate in Federal debt adjustment actions and bankruptcy actions, and provides for consolidation or merger of contiguous municipalities to relieve financial distress.

32. Further, none have resulted in guiding the City out of Act 47 status.

33. Until recently the Authority believed that its ability to provide clean, safe and affordable water would continue entirely autonomous of the City and its fiscal needs, and the pecuniary interests of any other entity.

34. Certain developments altered this landscape.

i. Act 73 Altered the Authority's Board and Prohibited any Authority Funds from Being Used Outside of its Mission or Purpose

35. First, the composition of the Board of *inter alia*, the Authority, was adjusted to better reflect and represent the communities amongst the service areas in which they operate. As a result of an amendment to Section 5610 of the Act (Governing Body), Act 73 of 2012, ("Act 73") provided for, *inter alia*, equal representation on the Authority's Board by three members each from the City, Chester County and Delaware County.

36. The amendments of Act 73 also included a prohibition on monies from an authority being utilized outside of the mission or purpose of that authority. 53 Pa.C.S. § 5612(a.1) (1). This amendment is wholly consistent with current Pennsylvania jurisprudence and specifically the pronouncements in *PEDF* that the assets, or proceeds thereof, of an environmental trust shall be used only for purposes tied to the corpus of the trust and its preservation. All other uses are beyond the scope of discretion conferred. *PEDF*, 161 A.3d at 933.

37. Thus, with this amendment, and following the issuance of *PEDF*, an incorporating municipality seeking to unilaterally acquire an authority under Section 5622 of the Act is required to utilize the proceeds of any such acquisition in accordance with the mission and

purpose of that authority. A municipality has no discretion to deviate beyond these purposes in its use of funds.

ii. Act 199 Put an End to Indefinite Act 47 Status

38. Second, the legislature limited the amount of time a municipality such as the City could remain in Act 47, enjoying the benefits and protections provided by this status. In 2014, the General Assembly enacted P.L. 2983 No. 199 ("Act 199"), which limited the time-frame to five years after the effective date of the most recent recovery plan or amendment, reserving the possibility of a one-time extension for no more than three (3) years thereafter.

39. At the time Act 199 was enacted the most recent recovery plan had been filed in May 2013. As a result, the City's deadline to Exit Act 47 status was to expire on May 2018, subject to a possible one-time three-year extension.

iii. Pennsylvania's Fair Value Legislation was Enacted

40. Finally, in June 2016 Act 12 of 2016, Pennsylvania's Fair Value Legislation, went into effect.

41. Act 12 made it easier for IOUs to acquire municipal authorities because it allowed them to offer higher prices to those authorities for their system assets, making a potential sale that much more appealing to the authority or, in many cases, incorporating municipality. With Act 12, IOUs and other entities regulated by the Public Utility Commission ("PUC") could now value the assets of a municipal water authority for rate-making purposes at the lesser of the fair market value or the negotiated purchase price.

42. While Act 12 does not discuss the effect of its provisions on ratepayers or address an authority or municipality's obligations under the ERA or the Act, the Commonwealth Court ruled in October 2018 that the PUC must consider the effect of a proposed Act 12 acquisition on

ratepayers in *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067 (Pa. Commw. 2018). With this decision the Court has recognized that the interests of the ratepayers – the beneficiaries – merit consideration.

43. In addition, the propriety of a municipality and/or authority's use of proceeds from the sale of the authority is also being considered by the Court. In March 2016, before the enactment of Act 12, Pennsylvania-American Water Company ("PAWC") announced the proposed purchase of the Scranton Sewer Authority ("SSA") serving the City of Scranton and Borough of Dunmore in Lackawanna County. The PUC approved the transaction[3] and the sale subsequently closed on December 29, 2016.[4] In October 2017, however, ratepayers filed a lawsuit against the SSA and the municipalities claiming that PAWC's purchase of the SSA violated the Act by providing proceeds of the sale to Scranton and Dunmore for their general fund. Claiming that monetizing the SSA's assets for use in Scranton and Dunmore's general funds was not part of the mission or purpose of the SSA, the lawsuit requests the return of all money from the asset sale pursuant to Section 5612(a.1) of the Act, and seeks to have all funds from the sale placed in trust. This action is pending in the Lackawanna County Court of Common Pleas at *Moses v. City of Scranton, et al.*, 2017-cv-5338.

44. While the system sales are often used as a means for cash-strapped municipalities to immediately obtain necessary funds, they have far-reaching implications on present and future generations that may not necessarily be in ratepayers' best interests. To be clear, it is these

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[3] *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Pa. PUC Docket No. A-2016-2537209, Opinion and Order entered Oct. 19, 2016, available at: < http://www.puc.state.pa.us/pcdocs/1481326.docx>

[4] Letter from PAWC to PUC dated Jan. 4, 2017, available at: < http://www.puc.state.pa.us/pcdocs/1496409.pdf >

ratepayers – present and future – who are funding these purchases through extraordinarily inflated rate increases.

45. Support for some of these sales has been found in the fact that they provide a means for municipal authorities facing mounting infrastructure upgrades necessary to continue to promote the health and well-being of the ratepayers to sell their assets to an IOU better equipped to finance those upgrades. However, an authority need not be struggling in order to consider such a sale and, since its passage, IOUs have routinely looked at purchasing and taking over the assets of viable utilities already providing high-quality water at competitive prices.

46. In such a situation, when a viable, healthy authority is targeted for purchase, the ratepayers can suffer measurable consequences that are entirely inconsistent with the constitutionally mandated fiduciary principles under which the Authority operates.

iv. The Aqua Offer

47. In May of 2017 the Authority learned first-hand the potential reach of Act 12. In the context of the City's looming deadline to improve its financial condition and finally exit Act 47 Status, Aqua Pennsylvania, Inc. and/or Aqua America, Inc. ("Aqua") submitted to the Authority an unsolicited purchase offer to acquire its assets and liabilities for $320,000,000.00 (the "Aqua Offer").

48. In its Offer, Aqua promised the Authority: (i) a compensated nine-member advisory board to assist Aqua management for a negotiated period of time, (ii) continued employment for the Authority staff and management, (iii) rates below Aqua's state-wide rate for at least a decade, (iv) financial assistance to the City to reduce or eliminate existing financial obligations and (v) financial assistance to the City with its efforts to emerge from Act 47 status.

49. Aqua believed that its purchase would provide the City and the Counties with a meaningful share of net proceeds allowing each of them to reduce long term financial obligation, reduce or maintain the level of taxation, or to otherwise invest in the future of the municipality. How the proceeds might be divided and distributed by this nine-member Board representing the members' respective municipalities, however, was unaddressed. Aqua's offer also did not mention, let alone discuss, the Authority's obligations as a trustee of public natural resources under the ERA, or the Authority's obligation to use the proceeds of a sale solely to further the purposes of the Authority under Section 5612(a.1)(1) of the Act.

50. The Act provides a framework for how a municipality might possibly benefit from an IOU purchase offer under the Fair Value Act. Section 5622 of the Act provides that "if a project established under the Act by a board appointed by a municipality is of a character which the municipality has power to establish, maintain or operate and the municipality desired to acquire the project, it may by appropriate resolution... signify its desire to do so." In response, the authority "shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project." 53 Pa.C.S. § 5622(a).

51. Thus, Aqua's Offer was a proposed monetization of the Authority's assets, which could purportedly provide the City with the quick cash it needed to possibly exit Act 47 status and allow Aqua and its shareholders to benefit significantly over the long-term by financing a relatively small lump-sum upfront payment to the City. In exchange, and despite an illusory rate-freeze[5], the Authority's ratepayers would receive increased water charges in perpetuity.

[5]The PUC is responsible for reviewing and adjudicating the rates of utilities whose rates are regulated under the Public Utility Code including, Aqua America's state level operating company, Aqua Pennsylvania, Inc, and may accept, reject, or modify a proposed rate freeze. *See Application of Aqua Pennsylvania Wastewater, Inc. (APW) for approval of: (1) the acquisition by APW of the wastewater system assets of Avon Grove School District*, Pa. PUC

52. Ten days after the purchase offer was issued, the Authority formally rejected the proposed monetization as not in the best interests of the Authority's ratepayers. By resolution dated May 18, 2017, the Authority's Board resolved to undertake a sixty to ninety-day analysis of whether any disposition of the Authority's assets would be in the best interests of ratepayers, in the event that future proposals were presented to the Authority.

53. Thereafter the Pennsylvania Supreme Court issued its decision in *PEDF* in June 2017 which (1) confirmed the Authority's emphasis on the interests of its ratepayers and the protection of public natural resources as paramount, and (2) rejected the notion that the Authority's assets, or the proceeds therefrom, could go to the City to generally alleviate its financial distress. To the contrary, the Court made clear in this landmark decision that these assets comprise the corpus of an environmental trust; thus, any proceeds therefrom must be used consistent with the Authority's role as trustee to provide for the benefit of its present and future ratepayers.

54. If the Authority's assets were to be monetized and sold to a private entity such as Aqua (or another IOU), residential Authority ratepayers could see an increase in rates of more than 120% over present Authority rates; commercial customers in the City could see an increase of more than 116%; and industrial customers in the City could see an increase of more than 207%.

55. These rate increase figures are likely to grow even more disproportionate over time. For example, Aqua has filed a water and wastewater rate case in the PUC that resulted in

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Docket No. A-2017-2586983, Order entered July 12, 2017, available at: < http://www.puc.state.pa.us/pcdocs/1528103.docx > ("The Agreement also notes that rates will remain unchanged until January 1, 2019. After January 1, 2019, the rates can be changed in a future rate case or other filing with the Commission. Regardless of this contract provision, the Commission's ability to assign rates will not be infringed or limited. As such, the applicability of this proposed rate freeze provision will be decided as part of APW's next rate case."). Moreover, the PUC is required to consider the effects of a proposed rate freeze for newly acquired customers on the rates of existing customers. *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067 (Pa. Commw. 2018).

the filing of a joint settlement in February of this year. Under this agreement, which goes into effect in May 2019 if approved, the proposed customer rate increase is said to be designed to add approximately $47 million in revenue to Aqua, a result claimed by its Chairman and CEO to be a "fair outcome for [Aqua] customers and [Aqua]."

56. Affordability is a significant issue in the Service Area and especially within the City, where there is high unemployment and limited economic growth. According to the US Census Bureau, the median household income in the City (2010-2016) is $27,217.00, and 36.9% of the population is in poverty.[6]

57. In a recent American Water Works Association Benchmarking Survey, at the 75th percentile, water charges for water-only utilities represented 0.59% of the median household income. At the 25th percentile, water charges represented 0.92% of the median household income.[7]

58. Assuming a typical residential monthly charge for a City customer is $35.15, the annual cost of water represents 1.55% of the median household income in the City. By comparison, IOU rates represent 2.87% or more of the median household income.[8]

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[6] https://www.census.gov/quickfacts/fact/table/chestercitypennsylvania,PA/PST045217

[7] 2017 AWWA Utility Benchmarking; American Water Works Association; Denver CO; 2017; p. 74.

[8] *See* Chester Water Authority Comparative Rate Schedule, New Rates Effective July 1, 2016; compare with Pennsylvania-American Water Company, Rates Rules and Regulations Governing the Distribution and Sale of Water Service in Certain Municipalities and Territories Located Adjacent Thereto, Issued June 15, 2018, Effective July 1, 2018; Aqua Pennsylvania Inc., Rates and Rules Governing the Distribution of Water in Portions of Adams, Berks, Bradford, Bucks, Carbon, Chester, Clarion, Clearfield, Columbia, Crawford, Cumberland, Delaware, Forest, Juniata, Lackawanna, Lawrence, Lehigh, Luzerne, Mercer, McKean, Montgomery, Monroe, Northampton, Northumberland, Pike, Schuylkill, Susquehanna, Snyder, Venango, Warren, Wayne and Wyoming Counties, Issued December 15, 2017, Effective January 1, 2018; SUEZ Water Pennsylvania, Inc., Harrisburg, Pennsylvania, Rates, Rules and Regulations Governing the Distribution of Water, Issued March 28, 2018, Effective January 23, 2018.

59. The disproportionate increase is a result of the fact that, unlike the Authority, these for-profit entities have local, state and federal income tax obligations, and significantly, shareholder dividends and profits for which to account.

60. This type of increase in rates would have an adverse effect on the fiscal health of the City's residents and other ratepayers, while, at the same time, increasing revenues for any IOU that might operate the Authority by approximately $1 billion in dollars every twenty-three (23) years, based on current IOU rates.

c. **The Authority's Role as a Fiduciary**

61. The Authority's primary consideration of the interests of its present and future ratepayers is wholly consistent with its fiduciary obligations as trustee of Pennsylvania's public natural resources, for the benefit of the designated beneficiaries who are citizens of this Commonwealth.

62. As noted above, the Pennsylvania Supreme Court recently confirmed that the Commonwealth, and its constituent entities, such as the Authority, acts as "trustee of the environmental trust created by the people of Pennsylvania." *PEDF*, 161 A.3d at 916.

63. Significantly, in terms of the obligations of a trustee, the Court reasoned that they "are not vested exclusively in any single branch of Pennsylvania's government, and instead all agencies and entities of the Commonwealth government, both stateside and local, have a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality. *PEDF*, 161 A.3d 931 n.23.

64. With regard to the scope of protections afforded under the ERA, the Court noted:

a. "[The ERA] grants two separate rights to the people of this

Commonwealth. The first right is contained in the first sentence, which is a prohibitory clause declaring the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic and aesthetic values of the environment. This clause places a limitation on the state's power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional."

b. "The second right reserved by Section 27, set forth in its second sentence, is the common ownership by the people, including future generations, of Pennsylvania's natural resources."

c. "The third clause...establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth the trustee and the people are the named beneficiaries."

65. When dealing with these public natural resources, trustees such as the Authority must "balance the interests of present and future beneficiaries" and "cannot be shortsighted." *Robinson Twp.*, 83 A.3d at 959.

66. With regard to the assets of the trust, trustees such as the Authority, "may use the assets of the trust only for purposes authorized by the trust or necessary for the preservation of the trust; other uses are beyond the scope of discretion conferred, even where the trustee claims to be acting solely to advance other discrete interests of the beneficiaries." *PEDF*, 161 A.3d at 933.

67. Thus, the ability and discretion of a trustee such as the Authority to take certain actions is limited by the express purpose of Section 27 that it "conserve and maintain" the people's public natural resources for the benefit of the people and generations yet to come. Any action must be taken consistent with this basic purpose. *PEDF*, 161 A.3d at 934.

68. The plain meaning of the terms "conserve and maintain" implicate a duty to prevent and remedy the degradation, diminution or depletion of our public natural resources. As a fiduciary, a trustee such as the Authority has a duty to act toward the corpus of the trust – the public natural resources – with prudence, loyalty and impartiality. *Robinson,* 83 A.3d at 956-57.

69. In fact, a trustee such as the Authority has the correlating duty to "refrain from permitting or encouraging the degradation, diminution or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly, e.g., because of the state's failure to restrain the actions of private parties." *Robinson Township*, 83 A.3d at 954-56.

II. REQUEST FOR APPROVAL OF MEMORIALIZED TRUST AND RE-TITLING OF ASSETS

70. With the Authority's fiduciary rights, duties and obligations settled and clear under the law of this Commonwealth, the Authority has sought to memorialize them through the establishment of the Chester Water Authority Trust. *See* Exhibit "A."

a. Salient Provisions of the Trust

71. The Authority intends to transfer into the Trust any real and/or personal property, as further defined by the express designation of the Solicitor and Authority personnel, that comprise and make up the generation (including the source water intakes), transmission and storage-related assets of the Authority. *See* Schedule "A" to Exhibit "A."

72. The Authority also intends for the Trust to hold any other principal asset acquired by the Trustees (and any appreciation thereon), whether by reason of an addition, or the sale of an existing asset and reinvestment of the proceeds thereof. *See* Exhibit "A" at Section 2.1

73. Notwithstanding the foregoing, no transfer shall occur with respect to any permit(s) or license(s) held by the Authority and/or any real property in which title thereof would

void, contradict the terms of or regulations governing, or otherwise jeopardize the status of any such permit(s) or license(s). To the extent the transfer of any designated asset(s) would result in a breach of the Authority's existing contracts or agreements, the transfer of that designated asset shall not occur. *See* Schedule "A" to Exhibit "A."[9]

74. The initial trustees named in the Trust under Section 7 thereof are Cynthia F. Leitzell, Paul Andriole and Livia Smith ("Trustees"), and they have signed the Trust indicating their acceptance as Trustees. *See* Exhibit "A" at Section 7.1 Upon the transfer of assets to the Trust as approved by this Honorable Court, the Trust provides that the Trustees are to hold and administer the assets subject to Pennsylvania law requiring that the Trust be held exclusively for the benefit of the designated beneficiaries. Exhibit "A."

75. Under the terms of the Trust, the Trustees would hold the assets, and have discretion with respect to any income derived therefrom, in trust, for a period of forty (40) years. The Trust will continue for a period of forty (40) years (the "Term"), running from the first date the Assets are transferred to the Trust. *See* Exhibit "A."

76. As provided under the terms of the Trust, the assets, and income derived therefrom, will be held, in trust, for the express benefit of the Trust's beneficiaries; being the current ratepayers and citizens, as well as future generations, within the Service Area, including but not limited to communities within western Delaware County, southern Chester County and the City of Chester. Exhibit "A"

77. During the Term, and in addition to all general powers granted by law, the Trustees are expressly authorized to, *inter alia*, "enter for any purpose into a lease as lessor or

[9] The Authority intends to provide an inventory of the designated assets after addressing with the Court certain security and/or confidentiality issues attendant therewith, including those implicated under, *inter alia*, the Public Utility Confidential Security Information Disclosure Protection Act, 35 Pa.C.S. § 2141.2, and/or other relevant laws or provisions.

lessee, ... including the power to lease real and personal property (as so leased, the "Leased Premises") to the Authority to continue the mission of the Authority as described in the General Provisions under Section 1 hereof. *See* Exhibit "A" at Section 5.2(i).

78. Furthermore, during the Term, the Trustees have the power to engage in any project, to exercise any power, to acquire any other assets and to transfer such assets (other than the Leased Premises ...) so long as, in the exercise of any such activities, the Trust shall not impair or dilute the Leased Premises, or allow any rights in or claims to the Leased Premises or any part thereof to be created in or available to any creditors of the Trust. *See* Exhibit "A" at 5.1(d).

79. Upon the expiration of the Term, the Trust shall terminate, and the then-remaining balances of income, if any, and principal held hereunder shall revert back and be transferred to the Authority who shall continue to hold and administer the same as trustee of certain public natural resources for the benefit of the people of this Commonwealth pursuant to Article I, Section 27 of the Constitution of the Commonwealth of Pennsylvania, as confirmed by pronouncement of the Pennsylvania Supreme Court. Exhibit "A."

b. **The Requested Relief Should be Granted**

80. The Authority's creation of the Trust to expressly memorialize its fiduciary rights, duties and obligations under Pennsylvania law is consistent with and authorized by the Act, which grants the Authority *broad power* to do all acts and things necessary or convenient for the promotion of its business including financing working capital, acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of, *inter alia*, waterworks, water supply works and water distribution systems. 53 Pa.C.S. § 5607(a)(10) and (17) (emphasis added).

81. The Authority's creation of the Trust to expressly memorialize its fiduciary rights, duties and obligations under Pennsylvania law is also in accord with the purposes and powers granted to the Authority under the Act, those being "for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health and living conditions. 53 Pa.C.S. § 5620.

82. The Authority's creation of the Trust to expressly memorialize its fiduciary rights, duties and obligations under Pennsylvania law is in the best interests of its present and future ratepayers and citizens of this Commonwealth. It will allow the Authority to continue to provide quality, clean and safe water to its ratepayers through reasonable charges.

83. The Authority's creation of the Trust to expressly memorialize its fiduciary rights, duties and obligations under Pennsylvania law supports its duty to conserve and maintain the Commonwealth's natural resources. By protecting these assets under the structure of the written declaration of trust, and holding them in a trust to be governed in full accord with the environmental principles set forth in the Constitution of this Commonwealth, the corpus, and proceeds therefrom, will be directed, invested and utilized for the provision of clean and affordable water for generations to come.

84. Through the establishment of and approved transfer of assets to the Trust, the Authority intends to continue to provide access to clean and affordable water for all present and future ratepayers, and discharge its obligations under Section 27 in accordance with its purposes and powers under the Act and Pennsylvania law in order to adhere to Section 27 and the Pennsylvania Supreme Court's pronouncements in *Robinson* and *PEDF* that it stands as a fiduciary for the designated beneficiaries who are citizens of this Commonwealth, to conserve,

maintain, and prohibit the degradation, diminution and depletion of the public's natural resources.

85. Through the establishment and approved funding of the Trust, the Authority does not intend to change the nature of the governmental purpose, obligations and duties under Section 27 with respect to the conservation and maintenance of the Commonwealth's natural resources for the benefit of the citizens of the Commonwealth.

86. It also does not intend to change the federal, state, and local tax treatment with respect to activities derived from the Act (or otherwise invoke any additional or other tax obligation) that may be involved with the Trust inasmuch as the Trust provides for the performance of the same duties for the same population as is currently in place with respect to the Authority under Pennsylvania law.

III. PARTIES IN INTEREST

87. The parties in interest are as follows:

	Name	Relationship
a.	City of Chester c/o Kenneth R. Schuster. Esq. City Solicitor 405 Avenue of the States Chester, PA 19013	Incorporator
b.	Delaware County c/o County Clerk Anne M. Coogan Government Center, Room 206 201 W. Front Street Media, PA 19063	Appointing Entity
c.	Chester County c/o Thomas L. Whiteman, Esq. Solicitor 1313 W. Market St. Ste. 6702 West Chester, PA 19380-0991	Appointing Entity

	Name	Relationship
d.	Department of Environmental Protection Office of Chief Counsel Front Office P.O. Box 2063 400 Market St., 16th Floor Harrisburg, PA 17105	Supervisory Department of the Commonwealth of Pennsylvania
e.	Susquehanna River Basin Commission c/o Jason E. Oyler, Esq. General Counsel 4423 North Front Street Harrisburg, PA 17110	Governmental Agency
f.	Delaware River Basin Commission c/o Kenneth Warren, Esq. General Counsel Warren Environmental Counsel, LLC 975 Mill Road Millbridge Manor House Suite A Bryn Mawr, PA 19010	Governmental Agency
g.	Over 43,850 ratepayers of the Chester Water Authority	Beneficiaries
h.	Trustees of the Chester Water Authority Trust c/o Denis A. Gray, Esq. Palmer & Gray LLP Carriage House, Suite 100 115 Bloomington Avenue Wayne, PA 19087	Trustees of Chester Water Authority Trust
i.	Wells Fargo Bank, N.A. 123 S. Board Street Suite 1500, MAC Y 1379-159 Philadelphia, PA 19109 Attn: Corporate, Municipal and Escrow Securities	Trustee for Outstanding Bonds

88. With respect to the parties named in paragraph 87, subparts a. through f.; h. and i., Petitioner proposes to serve them with a Notice to Plead at the addresses indicated, along with a copy of the Petition, Preliminary Decree and Proposed Decree, by first-class United States mail, postage prepaid. Notice will be provided to the trustee for the outstanding bonds *via* United States certified mail as required by the terms of the indenture.

89. In view of the extraordinarily extensive number of ratepayers who are receiving water services as ratepayers from the Authority, and the attending economic and practical burden of providing a copy of the Petition, Preliminary Decree and Proposed Decree to all of them, Petitioner proposes, with respect to the parties noted in subpart g. of paragraph 87 above (that being: the Authority's ratepayers), to provide them with a postcard notification, postage prepaid, substantially in the form attached hereto as Exhibit "B," which includes a recital that the Petition, Preliminary Decree and Proposed Decree will be posted on the Authority's website, http://www.chesterwater.com and can be mailed to any ratepayer who requests a copy, as further described in Exhibit "B." Petitioner proposes to mail the postcard *via* first-class United States mail, postage prepaid, to the ratepayers addressed to each customer's address as reflected on the Petitioner's records

90. Petitioner also proposes to provide notice by publication in the Delaware County Daily Times and the Delaware County Legal Journal over a period of two (2) successive dates on March 15, 2019 and March 22, 2019, substantially in the form attached hereto as Exhibit "C," in order to provide notice to those persons who are not ratepayers, but who may collaterally or incidentally benefit from the water services provided by the Authority.

91. In addition to giving notice to the City of Chester, Chester County, Delaware County and the ratepayers of the Authority within those entities, notice is also being provided to certain governmental agencies having responsibilities directly associated with the Authority's provision of water as one of the Commonwealth's natural resources: (i) the Pennsylvania Department of Environmental Protection (previously the Pennsylvania Department of Environmental Resources), the Pennsylvania agency whose mission is to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens though a

cleaner environment; (ii) the Susquehanna River Basin Commission, a governmental agency established by the Susquehanna River Basin Compact adopted by the United States Congress and the legislatures of New York State, Pennsylvania and Maryland, whose mission is to enhance public welfare through comprehensive planning, water supply allocation, and management of water resources of the Susquehanna River Basin; and (iii) the Delaware River Basin Commission, a federal-interstate agency, whose directives and duties are to plan, develop, conserve, regulate, allocate, and manage water resources in the basin. The aforementioned agencies have, at some point in time, issued permits to the Authority in connections with its provision of water, being one of the Commonwealth's natural resources.

92. Notice is also being provided to Wells Fargo Bank, N.A., Trustee of the Authority's outstanding bond indenture, on behalf of the current bondholders.

93. In order to protect the personal information of the Authority's ratepayers, the Authority intends to provide the Court with Proof of Service regarding the mailing of the postcard notice as described in paragraph 87 above by an affidavit of Petitioner's counsel attesting to the mailing of the postcard notice *via* United States first class mail, postage prepaid, to all customers of the Authority at the address reflected on the records of the Petitioner in the form of a postcard containing the contents described in Exhibit "B."

94. Petitioner has attached a Preliminary Decree reciting the methodology for notice as proposed by Petitioner along with an open field for the date for the scheduling of a hearing by the Court.

IV. PRAYER FOR RELIEF

WHEREFORE, Petitioner Chester Water Authority, as trustee of certain public natural resources for the benefit of the designated beneficiaries who are citizens of this Commonwealth pursuant to Section 27 of the Constitution of the Commonwealth of Pennsylvania, and as settlor

of the Chester Water Authority Trust, respectfully requests that the Court enter a Decree approving the memorialization of the trust in the form attached hereto as the Chester Water Authority Trust, and the transfer of the assets described herein, to the Chester Water Authority Trust, to be held by the Trustees thereof in accordance with the terms of the Chester Water Authority Trust.

Respectfully submitted,

CONRAD O'BRIEN PC

Dated: 3/1/19

By: _____
Kevin Deeley Kent, Esq. (No. 85962)
Megan A. Guernsey, Esq. (No. 202065)
Joseph W. Jesiolowski (No. 307323)
Centre Square, West Tower
1500 Market Street, Ste. 3900
Philadelphia, PA 19102
Phone: (215) 864-9600
Fax: (215) 864-9620
Email: kkent@conradobrien.com
mguernsey@conradobrien.com
jjesiolowski@conradobrien.com

HECKSCHER, TEILLON, TERRILL & SAGER PC

By: _____
John A. Terrill, II (I.D. No. 23135)
Karen A. Fahrner (I.D. No. 28471)
Heckscher, Teillon, Terrill & Sager, P.C.
100 Four Falls, Suite 300
West Conshohocken, PA 19428
(610) 940-4172 - jterrill@htts.com
(610) 940-4196 - kfahrner@htts.com

McNICHOL, BYRNE, MATLAWSKI PC

By: _____
J. Adam Matlawski, Esq. (No. 41678)
1223 N. Providence Road
Media, PA 19063
Phone: (610) 565-4322
Fax: (610) 565-9531
Email: amatlawski@mbmlawoffice.com

Attorneys for Petitioner

VERIFICATION

I, Cynthia F. Leitzell hereby state that I am the Chairperson of Petitioner, Chester Water Authority; that I am authorized to make this verification on behalf of Petitioner in the foregoing action; that I have personal knowledge of the statements made in the foregoing Petition; and that the statements made in the Petition are true and correct to the best of my knowledge, information, and belief.

I understand that the statements in this Verification are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 2/28/19

Cynthia F. Leitzell

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No.

IN RE: CHESTER WATER AUTHORITY TRUST

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Kevin D. Kent

Signature: _____

Name: Kevin Dooley Kent, Esquire

Attorney No. (if applicable): 85962

Submitted by: Megan A. Guernsey

Signature: _____

Name: Megan A. Guernsey, Esquire

Attorney No. (if applicable): 202065

Exhibit A

THE CHESTER WATER AUTHORITY TRUST

The Chester Water Authority, an Authority organized and existing under the Municipality Authorities Act, 53 Pa.C.S. Ch. 56, as amended, by and through its Board of Directors (the "Authority") hereby makes this deed of trust ("Deed of Trust") as of the 24th day of January, 2019.

Subject to final approval of a Court of Competent Jurisdiction in the Commonwealth of Pennsylvania, the Authority hereby transfers to the Trustees, in trust, the property listed on Schedule "A" attached hereto and incorporated herein by this reference, to be held and administered by the Trustees as specified herein, which shall be subject to Pennsylvania law requiring that the trust be held exclusively for the benefit of the community representing the citizens of the Commonwealth of Pennsylvania as described herein ("Trust").

SECTION 1

GENERAL PROVISIONS

1.1 Under the Municipality Authorities Act, 53 Pa.C.S. Ch. 56, as amended (the "Act"), the City of Chester, Delaware County, Pennsylvania, incorporated the Authority. The Act grants the Authority broad power to do all acts and things necessary or convenient for the promotion of its business including financing working capital, acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of, *inter alia*, waterworks, water supply works and water distribution systems. 53 Pa.C.S. § 5607(a)(10) and (17).

1.2 The mission of the Authority is to provide access to clean and affordable water for all present and future ratepayers within the community, consistent with its obligations under the Act and its fiduciary duties under the Pennsylvania Constitution. To this end, the Authority:

(a) Strives to provide high quality, clean, and safe water to all of its ratepayers, when they need it, at a reasonable cost; promote the economic vitality and general welfare of its present and future ratepayers; satisfy the water needs of its current and future ratepayers through orderly growth;

(b) Acquires and distributes fresh water supply for industrial and domestic purposes within its service area; obtains water from the Susquehanna River, owns and operates the Octoraro Reservoir, the Octoraro Treatment Facility and 637 miles of water mains that supply drinkable water to approximately 43,500 direct customers, and Authority supplies water to thousands of people through resale to neighboring water utilities.

(c) Provides treatment for drinking water serving communities currently within western Delaware County and southern Chester County as particularly described in a service area map, attached hereto as Schedule "B" and incorporated herein by this reference.

1.3 The purposes and powers granted to the Authority under the Act are for the benefit of the people of the Commonwealth of Pennsylvania (the "Commonwealth"), for the increase of their commerce and prosperity and for the improvement of their health and living conditions. 53 Pa.C.S. § 5620.

1.4 Article I, Section 27 of the Pennsylvania Constitution (hereafter referred to as "Section 27") provides:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

1.5 Section 27 contains an express statement of the rights of the people and the obligations of the Commonwealth with respect to the conservation and maintenance of public natural resources, and establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth is the trustee, and the people are the named beneficiaries. *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 916, (Pa. 2017) (hereinafter "*PEDF*").

1.6 Section 27 places the citizens' environmental rights on par with individual political rights.

1.7 The Pennsylvania Supreme has affirmed the Commonwealth's duties as the trustee in *Robinson* Township *v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality) (hereinafter "*Robinson*") and *PEDF* to conserve and maintain public natural resources, which duties also extend to other governmental entities in Pennsylvania. As noted in *Robinson*, *supra*, at 69:

> ...public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.

1.8 The Commonwealth's duties as the trustee of the environmental trust created by the people of Pennsylvania are as follows:

> As trustee, the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct. The explicit terms of the trust require the government to "conserve and maintain" the corpus of the trust. Pa. Const. Art. I, section 27. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a

duty to act toward the corpus of the trust - the public natural resources - with prudence, loyalty, and impartiality. *Robinson, supra*, at 956-57.

1.9 Through the formality of this Deed of Trust, the Authority intends to continue to provide access to clean and affordable water for all present and future ratepayers, and discharge its obligations under Section 27 in accordance with its purposes and powers under the Act and other Pennsylvania law in order to adhere to Section 27 and the Pennsylvania Supreme Court's pronouncements in *Robinson* and *PEDF* to conserve, maintain, and prohibit the degradation, diminution and depletion of the public's natural resources.

1.10 Through the formality of this Deed of Trust, the Authority does not intend to change the nature of the governmental purpose, obligations and duties under Section 27 with respect to the conservation and maintenance of the Commonwealth's natural resources for the benefit of the people of the Commonwealth. It also does not intend to change the federal, state, and local tax treatment with respect to activities derived from the Act (or otherwise invoke any additional or other tax obligation) that may be involved with the Trust inasmuch as the Deed of Trust provides for the performance of the same duties for the same population as is currently in place with respect to the Authority under Pennsylvania law.

SECTION 2

DEFINITIONS

The following words or phrases, when used herein with an initial capital letter, shall have the meanings set forth below unless a different meaning plainly is required by the context. Any reference to a section number shall refer to a section of this Deed of Trust unless otherwise specified.

2.1 "**Assets**" mean the Trust principal held, in trust, hereunder from time to time, including the property listed on Schedule "A" hereof as finally authorized by a Court of Competent Jurisdiction in the Commonwealth of Pennsylvania and any other principal asset acquired by the Trustees (and any appreciation thereon), whether by reason of an addition hereto or the sale of an existing asset and reinvestment of the proceeds thereof.

2.2 "**Authority**" means the Chester Water Authority, Chester, Pennsylvania, acting by and through its duly-appointed members of the Board as appointed from time to time.

2.3 "**Authority Board**" means the Board of the Chester Water Authority appointed and serving in accordance with the Authority's governing instrument(s) and the Act.

2.4 "**Authority Board Member**" means a member of the Board.

2.5 "**Beneficiary or Beneficiaries**" means the Water Service Participants.

2.6 "Deed of Trust" means this instrument, including any amendment thereto authorized as provided in subpart 3.3 of SECTION 3 below.

2.7 "Effective Date" means January 24, 2019.

2.8 "Service Area" means the communities currently serviced by the Authority as described in the Service Area map which is attached as Exhibit "B," and shall also include any additional communities and areas to which service is extended in the future.

2.9 "Trustees or Trustee" means the individual or individuals initially designated herein to serve as trustees and any successor Trustee or Trustees who may be designated as provided herein.

2.10 "Water Services" means the services described in 1.2 of SECTION 1 above.

2.11 "Water Service Participants" mean the ratepayers and citizens as of the Effective Date of this instrument as well as future generations, within the Service Area, including but not limited to communities within western Delaware County, southern Chester County and the City of Chester.

SECTION 3

TRUST DISPOSITIONS

3.1 Expenditure of Income and Principal: Until the expiration of the Term of the Trust, as defined below:

(a) The Trustees shall have the sole and absolute discretion to pay, or arrange for the payment of, any part or all of the net income, if any, that is received by the Trustees for the benefit of the Beneficiaries in such manner as will continue the mission of the Authority described above and remain consistent with the Authority's current activities as prescribed by Section 27. The Trustees may also pay any principal for the same purpose; provided, if such payment of principal would constitute a complete termination of the Trust prior to the expiration of the term of the Trust, the Trustees shall first obtain approval of a Court of Competent Jurisdiction in the Commonwealth of Pennsylvania.

(b) Any net income received by the Trustees and the principal of the Trust shall be held by the Trustees separate and apart from the assets of the Authority. The income, if any, and principal hereunder shall be dedicated to, and used solely in accordance with Section 1 of this Deed of Trust.

3.2 Term: The Trust under this Deed of Trust shall continue from the Effective Date for a period of forty (40) years (the "Term"), running from the first date the Assets are transferred to the Trust. Upon the expiration of the Term, the Trust shall terminate, and the then-remaining balances of income, if any, and principal held hereunder shall revert back and be

transferred to the Authority who shall continue to hold and administer the same, subject to Section 1 of this Deed of Trust.

3.3 **Irrevocable.** This Deed of Trust is irrevocable during the Term of the Trust, except as may be otherwise ordered by a Court of Competent Jurisdiction in the Commonwealth of Pennsylvania.

3.4 **Exclusive Benefit.** No part of any income or principal of the Trust may be used for, or diverted to, any purpose other than for the exclusive benefit of the Beneficiaries as provided under Section 27.

3.5 **Limit of Interests During the Trust's Term.** During the Trust's Term and until the transfer to the Authority as provided herein, any income and the principal held hereunder shall be held by the Trustees as legal and not beneficial owners, and no part of any income or principal of this Trust shall inure directly to the benefit of any one private individual.

3.6 **Spendthrift Provision.** No income or principal of the Trust shall be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other similar process whatsoever, whether it be that of the Authority, Trustees or Beneficiaries, and no assignment thereof to the Trust shall be enforceable in any Court of Competent Jurisdiction in the Commonwealth of Pennsylvania.

SECTION 4

DUTIES AND LIABILITIES OF THE TRUSTEES

4.1 **General Duties.** The Trustees shall administer the Trust in good faith in accordance with the terms of the Deed of Trust and its purposes and the interests of the Beneficiaries, and in accordance with applicable law, including the mission of the Authority, subject to Section 27.

4.2 **Annual Audit.** The Trustees shall engage an independent certified public accountant to conduct an annual audit of the Trust and provide a written report to the Trustees, the expense for which may be charged to the income, if any, or principal of the Trust in the Trustees' discretion.

4.3 **Liability Limitations.** Each Trustee shall be held harmless for all acts or omissions performed with respect to the Trust to the maximum extent permitted by law. Also to the maximum extent permitted by law, the Trustees shall be held harmless and shall be entitled to defense and indemnity in a manner consistent with the defense and indemnity afforded Authority Board Members under the Pennsylvania Tort Claims Act, 42 Pa.C.S.A. § 8541, *et seq.* The Trustees shall also be entitled to maintain insurance for acts or omissions of the Trustees and the Trust as provided in 5.2 (e) herein.

SECTION 5

POWERS OF THE TRUSTEES

5.1 **Specific Directions.**

(a) The Trustees may invest, sell and reinvest any funds hereunder provided they shall do so in accordance with the Act, 53 Pa.C.S. § 5611, as amended.

(b) The Trustees shall have no duty and shall not be required to diversify investments, including the Assets received by the Trustees.

(c) The Trustees may, in their discretion, sell any Assets of the Trust, and reinvest the proceeds thereof for purposes of providing Water Services, provided that the Trustees shall not be permitted to sell all or substantially all of the Assets needed to continue operating the business of providing Water Services, either directly or through delegation to any person or entity.

(d) The Trustees shall have the power to engage in any project, to exercise any power, to acquire any other assets and to transfer such assets (other than the Leased Premises as defined in Section 5.2(i) herein) so long as, in the exercise of any such activities, the Trust shall not impair or dilute the Leased Premises, or allow any rights in or claims to the Leased Premises or any part thereof to be created in or available to any creditors of the Trust.

5.2 **General Powers**. Subject to the provisions of 5.1 of SECTION 5 above, the Trustees shall have the following powers during the administration of the Trust, in addition to any powers given to the Trustees by law, which may be exercised in the Trustees' sole and absolute discretion without approval of any court:

(a) To compromise or settle claims without obtaining the consent of the court or any party with an interest in the Trust.

(b) To resolve any dispute regarding the interpretation of the Trust or the administration of the Trust by mediation, arbitration, or other alternative dispute resolution procedures.

(c) To prosecute or defend actions, claims, or proceedings for the protection of Assets and of the Trustees in the performance of the Trustees' duties.

(d) Notwithstanding the provisions of subpart (c) of 5.1 above, to abandon or decline to administer any property or Asset of the Trust which is of little or no value, transfer title to abandoned property, and decline to accept title to and administer property which has or may have environmental or other liability attached to it.

(e) To insure or cause to be insured the Assets against damage or loss and, at the expense of the Trust, protect the Trustees, the Trustees' agents, and the Beneficiaries from liability to third persons arising from the administration of the Trust.

(f) To advance money for the protection of the Trust and for all expenses, losses, and liability sustained in the administration of the Trust or because of the holding or ownership of any Assets.

(g) To pay taxes, assessments, compensation of the Trustees and employees and agents of the Trustees, and other expenses incurred in the administration of the Trust from income or principal pursuant to the Trustees' discretion.

(h) To receive additions to the Assets from the Authority to be held by the Trust.

(i) To enter for any purpose into a lease as lessor or lessee, including as provided for in subpart (t)(ii) of 5.2, with or without option to purchase or renew for a term within or extending beyond the term of the Trust, including the power to lease real and personal property (as so leased, the "Leased Premises") to the Authority to continue the mission of the Authority as described in the General Provisions under Section 1 hereof.

(j) To grant options for sales or leases of an Asset and acquire options for the acquisition of Assets, including options exercisable after the Trust terminates.

(k) To join in any reorganization, consolidation, merger, dissolution, liquidation, voting trust plan, or other concerted action of security holders and to delegate discretionary powers or duties with respect thereto.

(l) To vote a security, in person or by general or limited proxy, with or without power of substitution.

(m) To borrow funds and mortgage or pledge Assets as security for repayment of the funds borrowed, including repayments after the Trust terminates.

(n) To partition, subdivide, repair, improve, or develop real estate; enter into agreements concerning the partition, subdivision, repair, improvement, development, zoning, or management of real estate; impose or extinguish restrictions on real estate; dedicate land and easements to public use; adjust boundaries; and do anything else regarding real estate which is commercially reasonable or customary under the circumstances.

(o) To determine whether any receipt or any portion thereof including premiums from the sale of options, and any corporate distribution that is described or designated by the corporation as a stock dividend or as a distribution that may be received in cash or in shares of the corporation at the option of the Trustees, should be charged or credited to income or to principal or partly to each where the allocation is not clearly prescribed by governing law, and

expressly may allocate short term capital gains to income or to principal or partly to each regardless of governing law.

(p) To determine whether any expenditure to be made by the Trustees or any portion thereof including repairs to any real or personal property, and fees for custodian, accounting, legal, investment advisory and/or other professional services, should be charged to income or to principal or partly to each where the allocation is not clearly prescribed by law.

(q) To arrange for custodian, accounting, legal, investment advisory and/or other professional services and to pay for such services from income or principal per the Trustees' discretion, without diminution of compensation otherwise properly payable to the Trustees.

(r) To register investments in nominee name or to hold investments in bearer form.

(s) With respect to any federal, state or local law, rule or ordinance affecting any property held in trust hereunder related to the generation, use, treatment, storage, disposal, release, discharge of, or contamination by, any material or substance that is prohibited or regulated by federal, state or local law or that poses a hazard to the environment or human health:

(i) To inspect or investigate property the Trustees hold or have been asked to hold or property owned or operated by an organization in which the Trustees hold or have been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(ii) To take action to prevent, abate, or otherwise remedy any actual or potential violation of environmental law affecting property held directly or indirectly by the Trustees, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(iii) To decline to accept property into the Trust or disclaim a power with respect to property that is or may be burdened with liability for violation of environmental law;

(iv) To compromise claims against the Trust which may be asserted for an alleged violation of environmental law; and

(v) To pay the expense of inspection, review, abatement, or remedial action to comply with environmental law.

(t) To acquire, maintain, develop, and exploit, either alone or jointly with others, any water, oil, gas, coal, minerals, or other natural resource rights or interests. With respect to these interests, the Trustees may do any of the following:

(i) Drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell, and exchange any of those rights and interests on terms and for a price that the Trustees deem advisable;

(ii) Execute leases as provided for subpart(i) of 5.2, pooling and unitization agreements, and other types of agreements in connection with water, oil, gas, coal, mineral, and other natural resource rights and interests even though the terms of those arrangements may extend beyond the termination of the Trust;

(iii) Execute division orders, transfer orders, releases, assignments, farm-outs, and any other instruments that it deems proper; and

(iv) Employ the services of consultants and outside specialists in connection with the evaluation, management, acquisition, disposition, and development of any water or mineral interest; and pay the cost of the services from the principal and/or income of the Trust property.

5.3 **Business Powers.** In addition to and not in limitation of any other powers given to the Trustees hereunder by law or by other provisions of the Trust, the Trustees shall have the following powers with respect to any corporation, partnership, sole proprietorship or other business in which the Trustees hold an interest, without the necessity of obtaining court approval and without liability for self-dealing:

(a) In accordance with 53 Pa.C.S. § 5611, to retain, invest or reinvest in stocks, bonds, debentures or other securities or assets of said business without regard to any principle of diversification, and whether or not such securities or interests would normally be considered suitable investments for a fiduciary, including, without limitation, the right to continue as a general or limited partner in a partnership.

(b) To vote stock of any such business in whatever manner the fiduciary deems desirable, including the power to vote at corporate meetings by special, limited or general proxy, and to enter into voting trust agreements and stockholder agreements.

(c) To cause or join in or to prevent the recapitalization, incorporation, merger, consolidation, reorganization or liquidation of any such business, and to carry out any agreements into which the Chester Water Authority may have entered with regard to such business.

(d) To elect or employ as directors, officers, employees or agents of any such business any persons, including a Trustee or an employee, director, officer or agent of a Trustee hereunder, and to determine the compensation of such elected or employed person.

(e) To exercise any options which become available to the Trustees to subscribe to stocks, bonds, debentures or other securities of any such business.

(f) In general, to deal with any such business with the same freedom as any individual owner thereof would have.

5.4 **Delegation**. The Trustees shall have the authority to delegate responsibilities under this Deed of Trust, subject to the provisions of the Act regarding competition in award of contract stated in 53 Pa.C.S. § 5614, as amended. The Trustees are expressly authorized to delegate the responsibility of operating the business of providing Water Services. Any delegation hereunder may be to the Authority, or to officers and employees of the Authority, or to other individuals or organizations, including environmental professionals, attorneys, accountants, advisors, agents and/or consultants, or any other persons or entities as determined by the Trustees in their discretion. Any authorization by the Trustees, either directly or through delegation or lease to any person or entity other than the Trustees, to apply funds for the continuation of Water Services subject to Section 27 shall be deemed to be for the benefit of the Beneficiaries.

SECTION 6

ADMINISTRATION

6.1 **Bond**. No Trustee serving hereunder shall be required to enter bond or other security in any jurisdiction.

6.2 **Maintaining Records by the Trustees**. The Trustees shall maintain records with respect to the operation of the Trust, including all investments, and any pending litigation to which the Trust or the Trustees are a party, and shall require the same of any delegee, lessee or agent of the Trustees. Such records shall be retained for so long as the contents thereof may be or become material to the administration of the Trust. The Trustees shall promptly respond to all reasonable requests by the Authority for information related to the administration of the Trust.

6.3 **Expenses**. The expenses incurred by the Trustees in the performance of their duties hereunder, all proper charges and disbursements of the Trustees, including proper charges incurred with the delegation of responsibility in accordance with subpart 5.4; all taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Trust, or any money, property or security forming a part of the Trust fund, may be paid by the Trustees from the Trust, and the same shall constitute a charge upon the Trust; provided that, in the event the Trustees enter into a lease arrangement or other agreement with the Authority with respect to all or some of the Assets, the Trustees may contractually arrange for payment of any part or all of such expenses by the Authority on behalf of the Trust pursuant to such lease arrangement or other agreement.

6.4 **Action of the Trustees**. The Trustees shall act by majority decision. A majority of the Trustees shall constitute a quorum and acts of a majority of the Trustees present at any meeting at which a quorum is present or acts approved by all Trustees in writing shall be deemed to be valid acts. Notwithstanding the above, the Trustees may designate one of them to perform ministerial acts and otherwise execute any documents relating to the Trust, including contracts

relating to the Assets of the Trust, documents necessary for the exercise of any ownership rights thereunder, service agreements or other related documents; provided that the Trustees do so in a writing signed by the Trustees.

SECTION 7

TRUSTEES, SEVERABILITY, SITUS AND GOVERNING LAW

7.1 **Initial Trustee Appointment.** The Authority hereby appoints Cynthia F. Leitzell, Paul Andriole and Livia Smith as trustees (the "Trustees"). Each of the three individuals designated to serve as a Trustee by the Authority is a current Authority Board Member. Livia Smith was appointed to the Authority Board by the governing body of the City of Chester, Pennsylvania, and is also the Category A Trustee, as defined in subpart 7.2, below. Paul Andriole was appointed to the Authority Board by the governing body of Chester County, Pennsylvania, and is also the Category B Trustee, as defined in subpart 7.2, below. Cynthia F. Leitzell, was appointed to the Authority Board by the governing body of Delaware County, Pennsylvania, and is also the Category C Trustee, as defined in subpart 7.2, below.

7.2 **Residency Requirements.** All Trustees shall meet the residency requirements provided herein ("Residency Requirements"). There shall at all times be three Trustees serving hereunder, with one Trustee from each of the following: the City of Chester ("Category A"); Chester County, Pennsylvania ("Category B") and Delaware County, Pennsylvania ("Category C"). To qualify to serve as a Category A Trustee, the individual shall be a taxpayer in, maintain a business in, or be a resident of the City of Chester. To qualify to serve as a Category B Trustee, the individual shall be a taxpayer in, maintain a business in or be a resident of a town, township or borough within Chester County which receives services from the Authority, or in which one or more projects of the Authority extends or is to extend. To qualify to serve as a Category C Trustee, the individual shall be a taxpayer in, maintain a business in, or be a resident of a town, township or borough within Delaware County which receives services from the Authority, or in which one or more projects of the Authority extends or is to extend. At such time as a Trustee fails to meet the Residency Requirements, he or she shall be deemed to have resigned, and the remaining Trustees shall promptly notify the designated successor Trustee of such resignation and the designated successor Trustee shall give the remaining Trustees a written, signed acceptance of his or her role as a Trustee.

7.3 **Successor Trustee.** Each Trustee serving hereunder shall, from time to time, designate in writing his or her successor(s) in the event of a trustee vacancy with respect to his or her Category; provided that the designated successor(s) meets the Residency Requirements and at least one other Trustee provides written approval ("Approval Requirement") of the designation(s). Such Trustee may change his or her designation(s) to another individual prior to the occurrence of any vacancy for his or her Category; provided that the Residency Requirements and Approval Requirement are met. In the absence of such designation and approval, or if a vacancy remains unfilled for any other reason, the successor Trustee shall be appointed by the Court named in subpart 7.8, by petition of the serving Trustees requesting same,

with any appointment subject to the Residency Requirements for the Category for which there is a vacancy. The Authority shall not appoint any successor Trustee.

7.4 **Compensation.** No Trustee who is an Authority Board Member shall be paid compensation as a Trustee hereunder. No Trustee shall receive compensation as a Trustee hereunder in an amount greater than the compensation payable to such person if he or she were serving as an Authority Board Member instead of serving as a Trustee. However, a Trustee is entitled to be reimbursed for his or her reasonable expenses incurred in exercising his or her responsibilities as a Trustee.

7.5 **No Prohibition and Conflicts of Interest.** There shall be no prohibition on Authority Board members or employees serving as Trustees. It is anticipated that the Trustees, in their capacity as Trustees, may enter into any number of contractual arrangements with the Authority, including but not limited to a lease of some or all of the Trust's Assets to the Authority, while one or more of the Trustees is also serving as an Authority Board Member. Any and all such contractual arrangements with the Authority are hereby authorized and shall not be deemed to constitute a conflict of interest or be considered void or voidable as a breach of the Trustees' duty of loyalty to administer the Trust solely in the interest of the Beneficiaries.

7.6 **Governance.** The Trustees shall as needed adopt bylaws, policies and procedures to assist in matters of governance and in furtherance of their duties as Trustees.

7.7 **Severability.** If any provision of this Trust becomes void, the remaining provisions will continue in full force and effect.

7.8 **Situs, venue, governing law and construction.** The situs of this Trust shall be Delaware County, Pennsylvania. All disputes, controversies or differences which may arise out of or in connection with this Deed of Trust shall be exclusively settled before the Delaware Court of Common Pleas, Orphans' Court Division. This Deed of Trust shall be construed, governed, and administered in accordance with Pennsylvania law.

IN WITNESS WHEREOF, Authority and Trustees have set their hands and seals as of the 24th day of January, 2019 first above written.

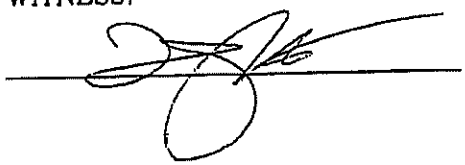
Chester Water Authority

Secretary

By: _____ (SEAL)
Chairwoman

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

WITNESS:



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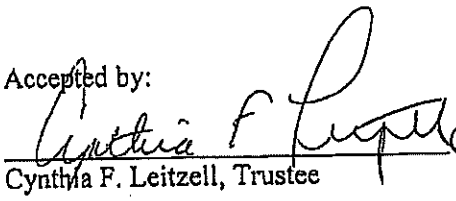
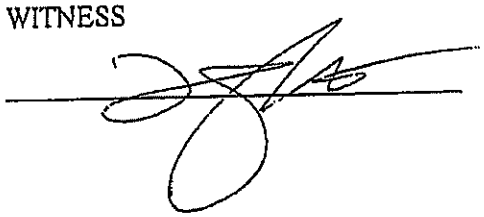


(SEAL)

Cynthia F. Leitzell, Trustee

WITNESS



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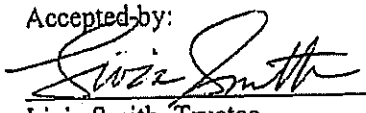
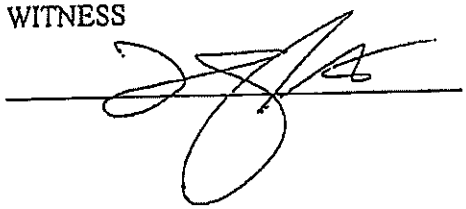


(SEAL)

Livia Smith, Trustee

WITNESS



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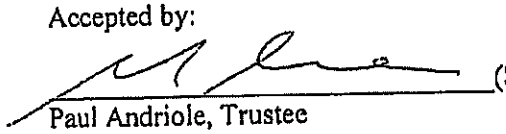


(SEAL)

Paul Andriole, Trustee

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF Delaware)

On this 14th day of February, 2019, before me the undersigned officer, personally appeared Cynthia F. Leitzell and Joseph F. McGinn, who acknowledged themselves to be the Chairwoman and Secretary of the Board of Directors of the Chester Water Authority, and that they, as such officers, being authorized to do so on behalf of the Authority, executed the foregoing instrument, for the purposes therein contained by signing the name of the Authority as Chairwoman and Secretary.

Witness my hand and official seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Denise M. Latch, Notary Public
Media Boro, Delaware County
My Commission Expires Oct. 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF Delaware)

On this 14th day of February, 2019, before me the undersigned officer, personally appeared Livia Smith as Trustee who represents that she is authorized to act on behalf of the Chester Water Authority Trust, executed the foregoing instrument for the purposes therein contained by signing the name of the Trust as Trustee.

Witness my hand and official seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Denise M. Latch, Notary Public
Media Boro, Delaware County
My Commission Expires Oct. 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF Delaware)

On this 14th day of February, 2019, before me the undersigned officer, personally appeared Cynthia F. Leitzell as Trustee who represents that she is authorized to act on behalf of the Chester Water Authority Trust, executed the foregoing instrument for the purposes therein contained by signing the name of the Trust as Trustee.

Witness my hand and official seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Denise M. Latch, Notary Public
Media Boro, Delaware County
My Commission Expires Oct. 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF Delaware)

On this 14th day of February, 2019, before me the undersigned officer, personally appeared Paul Andriole as Trustee who represents that he is authorized to act on behalf of the Chester Water Authority Trust, executed the foregoing instrument for the purposes therein contained by signing the name of the Trust as Trustee.

Witness my hand and official seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Denise M. Latch, Notary Public
Media Boro, Delaware County
My Commission Expires Oct. 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

SCHEDULE "A" TO THE
CHESTER WATER AUTHORITY TRUST
DATED JANUARY 24, 2019

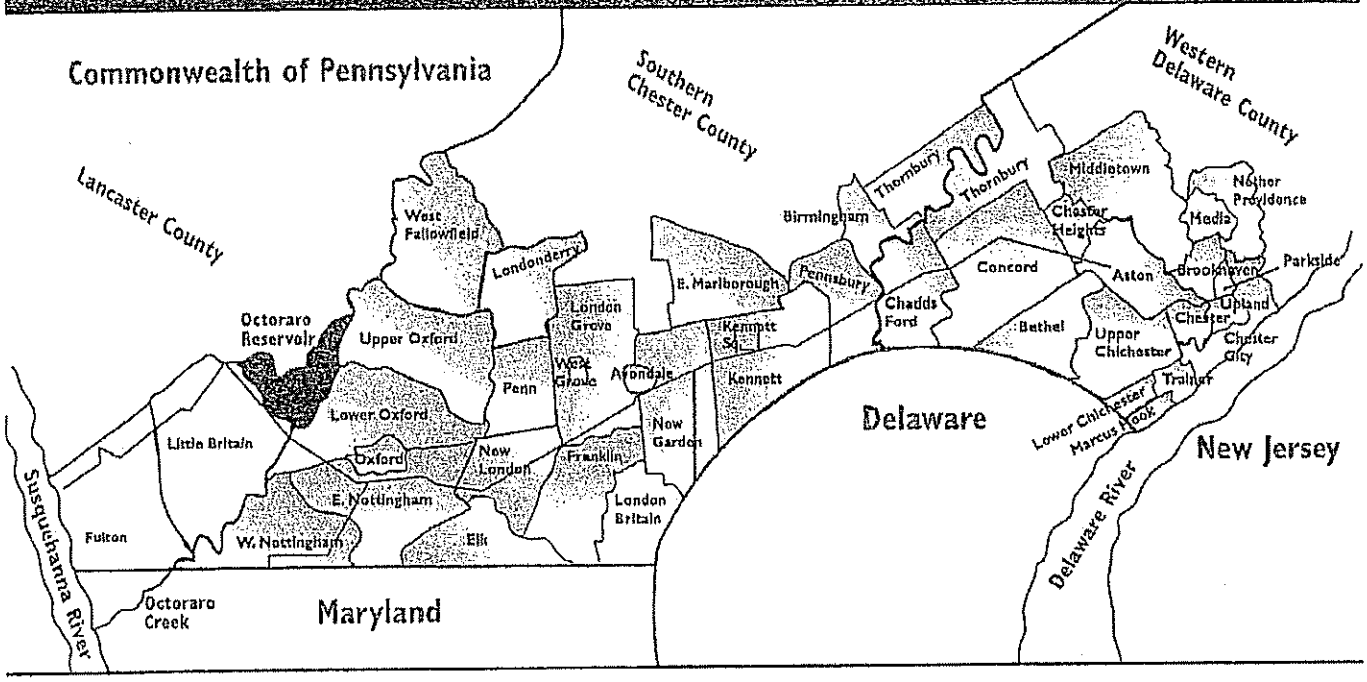
Any real and/or personal property, as further defined by the express designation of the Solicitor and Authority personnel, that comprise and make up the generation; transmission and storage-related assets of the Authority. Notwithstanding the foregoing, no transfer shall occur with respect to any permit(s) or license(s) held by the Authority and/or any real property in which title thereof would void, contradict the terms of or regulations governing, or otherwise jeopardize the status of any such permit(s) or license(s). To the extent the transfer of any designated asset(s) would result in a breach of the Authority's existing contracts or agreements, the transfer of that designated asset shall not occur.

SCHEDULE "B" TO THE
CHESTER WATER AUTHORITY TRUST
DATED JANUARY 24, 2019

[INCLUDE CURRENT SERVICE AREA MAP]

Chester Water Authority

Serving the City of Chester, Western Delaware County and Southern Chester County



P.O. Box 467
Chester, PA 19016

Web site:
www.chesterwater.com

Highlighted above in gold and purple are the Chester Water Authority service areas.

Key to Map

- Chester County
- Delaware County
- transmission mains

Exhibit B

NOTICE OF CHESTER WATER AUTHORITY LEGAL PROCEEDING

TO: Chester Water Authority ratepayers and other interested parties

The Chester Water Authority hereby gives notice of the Petition it has filed in the Delaware County Court of Common Pleas, Orphans' Court Division, entitled *In re: Chester Water Authority Trust*, No. ___.

The Petition seeks the Court's approval of the Authority's declaration of trust and transfer of certain assets into the trust. A copy of the Petition and attendant filings is posted on the Authority's website, http://www.chesterwater.com, and will be made available by the Authority to any ratepayer or interested party on request.

Any ratepayer or interested party that opposes the Petition must do so by filing a written objection with the Court on or before **[insert date]**, 2019. Further information is available http://www.chesterwater.com.

Exhibit C

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

No.

IN RE: CHESTER WATER AUTHORITY TRUST

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